



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Timothy S. Knowlton, Esq.
Honigman Miller, Schwarz and Cohn LLP
222 North Washington Square, Suite 400
Lansing, Michigan 48933

MAY 27 2009

RE: MUR 5887
Schwarz for Congress and
Robert Schuler, in his official
capacity as treasurer

Dear Mr. Knowlton:

On May 15, 2009, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of violations of 2 U.S.C. § 441a(f) and 2 U.S.C. § 434b, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Delbert K. Rigsby".

Delbert K. Rigsby
Attorney

Enclosure
Conciliation Agreement

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COMMISSION
OFFICE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Schwarz for Congress and)
Robert Schuler, in his official capacity as treasurer)

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MUR 5887

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Club for Growth. The Commission found reason to believe that Schwarz for Congress and Robert Schuler, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).

NOW THEREFORE, the Commission and Schwarz for Congress and Robert Schuler, in his official capacity as treasurer ("Respondents"), having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Schwarz for Congress ("Schwarz Committee") is a political committee within the meaning of 2 U.S.C. § 431(4).
2. Robert Schuler is the treasurer of the Schwarz Committee.
3. No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of Section 441a. See 2 U.S.C. § 441a(f).

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The Federal Election Campaign Act (the "Act") defines in-kind contributions as, *inter alia*, expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

4. Under 11 C.F.R. § 109.21, a communication is coordinated if it is (1) paid by a person other than the candidate or his or her authorized committee; (2) satisfies one of three "content" standards in section 109.21(c); and (3) satisfies one of six "conduct" standards in section 109.21(d).

5. A payment for a coordinated communication is made for the purpose of influencing a Federal election and is an in-kind contribution to the candidate's authorized committee that must be reported unless it meets certain exceptions. See 11 C.F.R. § 109.21(b).

6. The Act defines express advocacy as any communication that uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," or "cast your ballot for the Republican challenger for U.S. Senate in Georgia." See 11 C.F.R. § 100.22(a). Express advocacy also includes any communication when taken as a whole or with limited reference to external events, "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 C.F.R. § 100.22(b).

7. For purposes of 11 CFR part 109 only, in the case of an individual who is a federal candidate or an individual holding Federal office, an agent includes any person who has actual

authority, either express or implied, to engage in activities set forth in 11 C.F.R. § 109.3(b)(1) through b(6). *See* 11 C. F. R. § 109.3(b).

8. Each treasurer of a political committee is required to file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(a). Each report shall disclose the total amount of receipts for the reporting period and for the calendar year and the total amount of disbursements for the reporting period and for the calendar year. *See* 2 U.S.C. §§ 434(b)(2) and (4).

9. Congressman Joe Schwarz ran for reelection to the United States House of Representatives in Michigan's Seventh Congressional district in the August 8, 2006 primary. On January 23, 2006, Matt Marsden, an agent of the Schwarz Committee, sent an e-mail to Sarah Resnick, treasurer of Republican Main Street Partnership-PAC ("RMSP-PAC"), suggesting an idea for an ad that RMSP-PAC could run on behalf of the Schwarz Committee. The e-mail stated "Per our conversation on Friday, I have attached an idea for your consideration. I am sure you folks are far more creative but maybe it will get the ball rolling. We have confirmation T.W. [Tim Walberg, Congressman Schwarz's opponent] has purchased air time in March." The attachment contains a proposed script for a radio ad which begins with "(ominous music) or (some sort of emergency broadcast sound)" and the statement "This is a Warning." The script states, among other things, "The challenger is a fringe candidate who lacks the experience or the record of Congressman Joe Schwarz Beware of Tim Walberg – he is bought and paid for by money from Washington special interests. This has been a warning of the Political Truth System."

10. On February 1, 2006, RMSP-PAC paid Clear Channel Communications (WBCK) and Friends Communications (WABJ) for radio ads that ran between January 31, 2006 and

February 3, 2006 for a cost of \$405 and \$600, respectively. The ad begins with patriotic music and then states "Congressman Joe Schwarz is a leader with experience . . . dedication to service . . . a strong Republican record [ellipses in the original]." It also states that some individuals, like Tim Walberg, are distorting Congressman Schwarz's record, and "his [Tim Walberg's] campaign is bankrolled by a group of Washington special interests." Thus, while Ms. Resnick did not broadcast the exact script that Mr. Marsden suggested as a start to "get the ball rolling," one week after Matt Marsden suggested to Ms. Resnick that RMSP-PAC run a radio ad attacking Walberg for being tied to Washington special interests, RMSP-PAC ran such an ad.

11. The radio ad run by RMSP-PAC in February 2006 was coordinated by the Schwarz Committee and RMSP-PAC within the meaning of the Act because it meets the three pronged test for coordination set forth in 11 C.F.R. § 109.21(a), (c) and (d). First, the payment prong is met because RMSP-PAC paid a total of \$1,005 to Clear Channel communications (WBCK) and Friends Communications (WABJ). Second, the content prong is met because the radio ad expressly advocated the election of Joe Schwarz. In the radio ad, Joe Schwarz is described as a leader with "a strong Republican record" as opposed to Tim Walberg, whose "campaign is bankrolled by a group of Washington special interests," and it urges listeners to "support Congressman Joe Schwarz, the Congressman with a real Republican record." Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger U.S. Senate in Georgia, or "Smith for Congress." 11 C.F.R. § 100.22(a). Since the ad asks listeners to "support Congressman Joe Schwarz," it falls squarely within this portion of the regulation. The second part of the regulation encompasses a communication that, when taken as a whole or with limited reference to external

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events, "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 C.F.R. § 100.22(b). The ad references by name the two opposing candidates in the upcoming Republican primary, and states that one of them has a "campaign" that "is bankrolled by a group of Washington special interests," and explicitly urges "support" of the other. Thus, the "electoral portion" is "unmistakable, unambiguous, and suggestive of only one meaning" --elect Schwarz, not Walberg--and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." Third, the conduct prong is satisfied because the radio ad was created and produced at the request or suggestion of the Schwarz Committee based on the e-mail and proposed script sent by Matt Marsden to Sarah Resnick on January 23, 2006. See 11 C.F.R. § 109.21(d)(1).

12. Pursuant to a request by RMSP-PAC to the Schwarz Committee for radio stations where it could run radio ads on behalf of the Schwarz Committee, Matt Marsden sent an e-mail on June 15, 2006 to Sarah Resnick, on the subject "Radio for Main Street." In the e-mail, Mr. Marsden states "[h]ere are the stations and the areas. We do want to do WAAM in Ann Arbor and WWJ Lansing." This e-mail also contains an e-mail trail from earlier on that same day from Louie Meizlish, Deputy Campaign Manager, to Matt Marsden, in which Mr. Meizlish writes "WJIM (Lansing), WBCK (Battle Creek), WLEN (Lenawee), WKHM (Jackson) and WTVB (Coldwater)," followed by "Do you want to hit WAAM Ann Arbor?;" another e-mail from John Truscott, the Schwarz Committee's media buyer, to Louie Meizlish in which Mr.

Truscott says "Citadel [Broadcasting Co.], especially WJIM in Lansing is a musy [sic]. WBCK, WLEN – to tweak Wally in his back yard, the Jackson arm station – drawing a blank on call ltrs. That's a good start;" and an e-mail from Mr. Meizlish to Mr. Truscott stating "Matt wanted me to touch base and see if you had a list of the radio stations on which RMSP should do ads."

13. One month later, between July 17, 2006 and July 23, 2006, RMSP-PAC ran ads on radio stations WBCK, WKHM, Citadel Broadcasting Company's WJIM in Lansing, three of the stations referenced in the email, as well as on Citadel Broadcasting Company owned radio station WITL (also in Lansing), costing a total of \$5,878. RMSP-PAC's disclosure report also includes a payment on July 14, 2006 to Ventana Productions for \$1,000 for "radio ad production estimated cost" and lists Joe Schwarz as the candidate supported by this expenditure.

14. The July 2006 radio ads were coordinated by RMSP-PAC and the Schwarz Committee within the meaning of the Act because they met all three prongs of the coordinated communications test. First, they met the payment prong because RMSP-PAC paid a total of \$6,878 for them (including production costs). Second, they met the content prong because they were public communications that referred to Joe Schwarz, a clearly identified House candidate, and were publicly disseminated in July 2006 in Schwarz's jurisdiction within 90 days or fewer before the August 8, 2006 primary election. See 11 C.F.R. 109.21(c)(4)(i). They also met the content standard because they contained express advocacy. A communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "support the Democratic nominee." See 11 C.F.R. § 100.22(a). The ads state, after lauding Schwarz's accomplishments, "we know him, want him, back in Congress." The words "we . . . want him, back in Congress" are similar to the phrases cited in the regulation and they advocate that Mr. Schwarz should be elected. Moreover, those words, and the phrase "[t]his election is

about jobs and the economy, and Joe Schwarz has delivered,” when taken as a whole or with limited reference to external events, “could only be interpreted by a reasonable person” as advocating Mr. Schwarz’s election because the “electoral portion” is “unmistakable, unambiguous and suggestive of only one meaning.” See 11 C.F.R. § 100.22(b). Finally, RMSP-PAC distributed the ads on particular radio stations at the request or suggestion of the Schwarz Committee, thus satisfying the conduct prong. See 11 C.F.R. § 109.21(d)(1).

15. The Schwarz Committee accepted a direct contribution of \$1,000 from RMSP-PAC on June 13, 2005, an in-kind contribution of \$865 on June 20, 2006 in connection with a fundraiser benefiting the Schwarz Committee and in-kind contributions totaling \$7,883 from RMSP-PAC resulting from coordinated communications for radio ads in February 2006 and July 2006. Thus, the Schwarz Committee accepted a total of \$9,748 in contributions from RMSP-PAC, which was \$4,748 above the contribution limit that RMSP-PAC could make to the Schwarz Committee. Furthermore, the Schwarz Committee failed to report the excessive contributions received from RSMP-PAC.

V. Respondents accepted excessive contributions from RMSP-PAC in violation of 2 U.S.C. §§ 441a(f) and failed to report excessive contributions from RMSP-PAC in violation of 2 U.S.C. § 434(b). Respondents will cease and desist from violating 2 U.S.C. §§ 441a(f) and 434(b).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Two Thousand Five Hundred dollars (\$2,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof

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has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

**Thomasenia P. Duncan
General Counsel**

BY: 
**Ann Marie Terzaken
Associate General Counsel
for Enforcement**

5/26/09
Date

FOR THE RESPONDENTS:


**Timothy Sayer Knowlton
Counsel for Respondents**

April 27, 2009
Date

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